



NATIONAL CONGRESS OF AMERICAN INDIANS

November 8, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: NCAI REPLY COMMENTS IN THE MATTER OF MODERNIZING THE E-RATE PROGRAM FOR SCHOOLS AND LIBRARIES; WC DOCKET NO. 13-184

Dear Secretary Dortch,

On behalf of the National Congress of American Indians (NCAI), I respectfully submit these Reply Comments in the matter of *Modernizing the E-rate Program for Schools and Libraries* (WC Docket No. 13-184). Established in 1944, NCAI exists as the largest and oldest representative organization of American Indian and Alaska Native tribal governments. NCAI represents the broad interests of tribes and their citizens to advance, and promote the advancement of tribal sovereignty and self-determination.

Modernization of the Schools & Libraries (E-rate) program is greatly needed to address the considerable technological advances that have occurred since creation of the program in 1997. Like the adoption of the *Universal Service Fund/Intercarrier Compensation Transformation Order (USF/ICC Transformation Order)*, the proposed reforms to the E-rate program are designed to transition USF investments to support the deployment of broadband capable technologies across America.

Today's American Indian and Alaska Native youth will benefit immensely from proposals to increase access to high-speed Internet and broadband applications. Access to these important technologies will strengthen our educational institutions and provide substantial improvements to teaching models and environments for tribal students on and off tribal lands. The American Indian and Alaska Native population under the age of 18 comprises 32 percent of the total Native population, and Native youth under the age of 24 represent nearly half, or 42 percent, of the entire Native population. Recognizing these large sections of Native youth is important to ensuring that tribal lands are provided needed resources and access to technologies that benefit their education.

NCAI respectfully requests a 'Tribal Priority' in considerations for American Indian and Alaska Native educational institutions due to the economic disparities and high-levels of disconnectivity our communities experience.

BACKGROUND

In 1997, the Federal Communications Commission (FCC) created the USF to meet mandated goals established by Congress in the 1996 Telecommunications Act (P.L. 104-104). While tribes were not specifically referenced in P.L. 104-104, the FCC has continuously taken the stance that Congress directed the FCC to ensure all

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Americans, including tribal citizens, have access to affordable telecommunications services.¹ The USF E-rate program was established to connect schools and libraries to communications networks, with a primary focus on providing Internet access. The financial assistance offered through the E-rate program was crucial in supporting initial efforts for the U.S. to develop digital learning techniques. At the time E-rate was created, only 14 percent of classrooms had Internet access, and 74 percent of schools with Internet access connected through dial-up connections.² Nine years after the program's inception, 94 percent of instructional classrooms had Internet access, and in 2006, 98 percent of public libraries offered Internet access to the general public.³

On June 6, 2013 President Obama announced the ConnectED initiative and instructed the FCC to modernize the E-rate program to support high-speed digital connections for schools and libraries.⁴ Following the President's direction, the FCC adopted a Notice of Proposed Rulemaking (NPRM) to modernize the E-rate program on July 19, 2013.⁵ Proposals to modernize the E-rate program are focused on providing affordable high-capacity broadband services; increasing cost-effectiveness in the use of E-rate funds; and improving efforts to streamline administration of the E-rate program. The FCC also specifically requested input from tribal governments to address any unique circumstances requiring a tailored approach to E-rate funding for tribal institutions.

NCAI SUPPORT FOR A 'TRIBAL PRIORITY' TO E-RATE FUNDING

During NCAI's 2013 Mid Year Conference in Reno, Nevada, tribal leaders adopted Resolution #REN-13-064, *Support for the Establishment of a Tribal Broadband Fund and for Other Related Purposes*.⁶ Resolution #REN-13-064 recognized President Obama's announcement of the ConnectED initiative to bring high-speed broadband and wireless service to 99 percent of America's students within five years. Specifically, tribal leaders called for the FCC to provide the highest priority to tribal schools and libraries, and that any reforms made to the E-rate program should not adversely affect funding levels for current and future tribal participation.⁷

While the primary focus by the FCC and the Administration is to adopt reforms that would modernize the program's funding allocations tribes are concerned those reforms may impact current funding levels already received. Some of the tribal telecommunications service providers experienced USF deductions as a result of the implementation of reforms adopted through the

¹ See Federal Communications Commission. "Federal Communications Commission Takes Steps to Promote Access to Telecommunications on Tribal Lands." FCC Press Release. Released June 8, 2000. Available at http://transition.fcc.gov/Bureaus/Wireless/News_Releases/2000/nrw10016.html

² See Federal Communications Commission. "Modernizing the E-rate Program for Schools and Libraries, Notice of Proposed Rulemaking." Adopted July 19, 2013. Released July 23, 2013. Pg. 3, ¶ 2. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-100A1.pdf.

³ *Id.*

⁴ See "ConnectED: President Obama's Plan for Connecting All Schools to the Digital Age". Fact Sheet Released by the White House, June 6, 2013. Available at http://www.whitehouse.gov/sites/default/files/docs/connected_fact_sheet.pdf.

⁵ See Federal Communications Commission. "Modernizing the E-rate Program for Schools and Libraries, Notice of Proposed Rulemaking." Adopted July 19, 2013. Released July 23, 2013. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-13-100A1.pdf.

⁶ See National Congress of American Indians. Resolution #REN-13-064, *Support for the Establishment of a Tribal Broadband Fund and for Other Related Purposes*. Adopted June 27, 2013. Available at http://www.ncai.org/attachments/Resolution_DIzgmRRZHqzraWoasGiGEVjIQOmvpeljBINMeuAUbJRsvogzYkB_REN-13-064%20final.pdf.

⁷ *Id.* at pg. 2 ¶ 5.

USF/ICC Transformation Order. Any reforms that are adopted in the modernization of the E-rate program should serve to increase access to high-speed broadband technologies for tribal lands and Native people, while recognizing the substantial reliance on copper networks due to the high costs of fiber network deployment. Our communities have consistently received low-quality telecommunications services, if any service even exists at all.

A ‘Tribal Priority’ for E-Rate should be adopted by the *FCC* to prioritize funding for tribal schools and libraries, including those non-tribal institutions serving high percentages of Native people. Increased consideration must be afforded to tribal schools and libraries since many of these tribal institutions are located in geographically isolated locations. Prioritized funding for educational services coincides with the federal government’s fiduciary trust responsibility to tribal nations, and the FCC’s 2000, *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*.⁸

TRIBAL SPECIFIC RECOMMENDATIONS

I. REFORMS SHOULD TAKE INTO CONSIDERATION UNIQUE CIRCUMSTANCES ON TRIBAL LANDS

Generally, there are significant barriers to tribal entities participating in the E-rate program. There is typically a lack of telecommunications infrastructure and if that infrastructure exists it may provide basic telecommunications services. Additionally, the regulatory and legal framework that exists on tribal lands is unique to any other place in the United States. Infrastructure deployment on tribal lands involves dealing with a maze of federal agencies, tribal governmental entities, and individual tribal and non-tribal residents with vested interests in tribal fee lands. Due to these unique circumstances, obtaining rights-of-way or easements may be prolonged because of cultural implications.

Certain clearances are required by federal and tribal laws to authorize and implement the deployment of infrastructure projects. These laws and regulations were created to protect tribal sacred places and objects, which may slow the deployment of infrastructure. Additionally, there is a lack of technical and engineering resources available to tribes. Of the 566 federally-recognized tribes in the U.S., only ten have established tribally-owned and operated eligible telecommunications carriers (ETCs).⁹ Two primary reasons why there are not more tribally-owned and operated carriers include the lack of tribal technical capabilities and access to financial resources needed to begin these projects. The complex regulatory framework and compliance requirements provide another barrier to entry.

Comments submitted by the Navajo Nation Telecommunications Regulatory Commission (NNTRC) stated that, “[FCC] rules must be adjusted so that such remote locations are not punished because they cannot meet the same deadlines as urban schools that have access to multiple local

⁸ See Federal Communications Commission. *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*. Adopted June 8, 2000. Released June 23, 2000. Available at <http://www.fcc.gov/Bureaus/OGC/Orders/2000/fcc00207.doc>.

⁹ See Federal Communications Commission. “Federal Communications Commission Office of Native Affairs and Policy: 2012 Annual Report”. Pg. 50. Released March 25, 2013. Available at <http://www.fcc.gov/document/office-native-affairs-and-policy-2012-annual-report>.

architects, engineers, and construction contractors.”¹⁰ NCAI supports this comment made by NNTRC and recommends the FCC ensure tribal areas are not precluded from E-rate participation. There is no ‘one-solution’ to address these issues and each tribal case will highlight specific barriers. Therefore, NCAI agrees with NNTRC’s comments requesting increased financial support for the FCC’s Office of Native Affairs and Policy (FCC-ONAP). NCAI also agrees that additional technical and engineering support must be provided to FCC-ONAP so the office can provide these vital services to tribes.¹¹

II. CLEARLY DEFINE TRIBAL LIBRARIES ELIGIBLE FOR E-RATE

NCAI supports the comments made by NNTRC regarding issues with the definition of ‘library’ on tribal lands. Tribal ‘libraries’ are usually located in multi-service buildings that provide programs and services to tribal members. These buildings may not constitute a formal ‘stand-alone’ library or necessarily be attached to a primary or secondary education institution. In many instances, a ‘learning center’ or equivalent may be included in buildings which provide administrative services for tribal members. As appropriately stated by NNTRC, “In the same manner as states designate libraries for themselves, the Navajo Nation has designated Chapter Houses as libraries and mandated that the Office of the Navajo Nation Library work with Chapter Houses to provide library and educational services.”¹²

As tribal nations are inherently sovereign entities recognized by the federal government, they should have parity with states in the ability to designate tribal anchor institutions as ‘library’ equivalents. The Chapter House system developed and used by the Navajo Nation, however, is unique to their nation. Therefore, NCAI requests that the FCC, through FCC-ONAP, consult with tribal nations to determine other examples where tribes have combined multi-service institutions and develop rules allowing those institutions to participate in the E-rate program. NCAI also requests that the FCC work with the Universal Service Administrative Company (USAC) to ensure the tribal ‘libraries’, like the Navajo Chapter Houses, are eligible to participate in the E-rate program.

III. THE FCC MUST RECOGNIZE TECHNOLOGICAL LIMITATIONS IN EXTREMELY RURAL AREAS

NCAI agrees with the National Indian Education Association’s (NIEA) recommendation that the FCC should examine additional technological advancements that could compliment or upgrade existing copper networks on tribal lands. Investment in copper upgrades, such as very high bit rate digital subscriber lines (VDSL), could provide critical cost-savings to the E-rate program.¹³ Tribal lands overall lack basic telecommunications infrastructure, and many rely on analog, copper networks for vital communications. While the proposed reforms are designed to deploy high-quality broadband services across the country, there must also continue to be adequate resources to maintain traditional copper networks. Copper networks have continued to serve as critical safety-

¹⁰ See Comments by the Navajo Nation Telecommunications Regulatory Commission. Pg. 3. Filed September 16, 2013. Available at <http://apps.fcc.gov/ecfs/document/view?id=7520944056>

¹¹ *Id.* Pg. 23-24.

¹² *Id.* Pg. 8.

¹³ See Comments by the National Indian Education Association. Pg. 3. Filed September 16, 2013. Available at <http://apps.fcc.gov/ecfs/document/view?id=7520943952>

net networks for communications in times of emergency, specifically because fiber networks are susceptible to outages coinciding with electrical service. Vital anchor institutions receiving E-rate funding should be allowed to maintain or upgrade current copper communications infrastructure. This is critically important because tribal educational institutions may also operate as community emergency response centers, which necessitates access to reliable communications during natural disasters or other events.

Additionally, any reforms that are adopted by the FCC should preserve the ability of educational institutions to access Internet backbone facilities. Typically fiber and Tier 1 facilities are located in metropolitan or urban areas to provide access to densely populated areas. Comments submitted by General Communication, Inc. (GCI) articulate the immense challenges in Alaska due to its large land base and rurality. GCI stated that a primary reason for the success of E-rate in Alaska is due to the program's ability to provide affordable distance learning services for Alaska's rural schools and villages. To put into context the vast distances telecommunications services must travel, GCI stated that:

A key part of [E-rate] support is for the hundreds or thousands of miles of transport necessary to connect villages in rural Alaska, including islands in the Aleutian chain, to fiber facilities in Anchorage. Even once in Anchorage, Alaska traffic must traverse fiber undersea cables for 1,400 miles to Tier 1 Internet backbones in Seattle and Portland.¹⁴

Since there are 229 federally-recognized tribes in Alaska, and immense rural, economic, and basic infrastructure challenges, the FCC should consider Alaska specific proposals for E-rate. FCC-ONAP, as the primary office charged with consulting with tribal nations on behalf of the entire agency, should develop Alaska specific proposals through coordination and consultation with the federally-recognized tribes of Alaska and Alaskan telecommunications service providers.

IV. INCREASE DATA COLLECTION EFFORTS FOR E-RATE

In the E-rate NPRM the FCC also proposes questions related to data collection to establish progress benchmarks. NCAI supports efforts to gather accurate and timely data to determine the availability of telecommunications service on tribal lands. As the FCC considers viable avenues for this data collection, NCAI recommends coordination with tribal organizations such as the Association of Tribal Archives, Libraries, & Museums (ATALM). According to ATALM's website, this organization recently announced its initiative to collect data on the following:

- How tribal libraries are serving the technology needs of their service populations;
- What tribal libraries need to improve digital inclusion services;
- How Indian Country residents actually access and use the Internet and computer technology;
- How they would like to use computer technology at the Internet, and how their tribal libraries can help meet those needs;

¹⁴ See Comments by General Communication, Inc. Pg. 8. Filed September 18, 2013. Available at <http://apps.fcc.gov/ecfs/document/view?id=7520944359>.

- What additional adoption needs Indian Country residents have, and how libraries can serve those needs; and
- What gaps in library infrastructure, service, and training may prevent Indian Country residents from gaining the same quality of life benefits from digital inclusion.¹⁵

FCC coordination with organizations such as ATALM could supplement data collection efforts. Section 900 of the FCC's Form 481, which established new reporting requirements related to tribal lands, should also be utilized to determine the availability and quality of telecommunications services.

E-RATE: ADVANCING DIGITAL SERVICES IN INDIAN COUNTRY

Universal service programs have been very successful in bringing telecommunications services and technologies to tribal lands. Tribes and their membership have experienced great success through participation in the High-Cost Fund and the Low-Income (Lifeline & Link Up) programs. However, many areas still remain disconnected from these vital services, and there are still barriers to access that the FCC needs to address. While E-rate has been successful in connecting some tribal educational institutions, and serving tribal citizens on and off tribal reservation lands, reforms to modernize the program must also address those barriers to access. Examples like those provided by the Navajo Nation Telecommunications Regulatory Commission regarding the exclusion of Navajo Chapter Houses to participate in E-rate must be resolved. Large segments of the American Indian and Alaska Native population are under the age of 25, and we firmly believe that improvements to E-rate will benefit our youth and their education for generations to come.

Thank you for your efforts to modernize the E-rate program and we look forward to continued dialogue on this important issue. If you have any questions or concerns please contact NCAI Legislative Associate, Brian Howard, at bhoward@ncai.org.

Sincerely,



Jacqueline Johnson Pata
Executive Director
National Congress of American Indians

¹⁵ See Association of Tribal Archives, Libraries, & Museums. "About the Project – Digital Inclusions in Indian Country: A National Study on the Role of Tribal Libraries. Accessed November 8, 2013. Available at <http://www.atalm.org/sites/default/files/ABOUT%20THE%20PROJECT.pdf>